

R162. Commerce, Real Estate.

R162-205. Residential Mortgage Unprofessional Conduct.

R162-205-1. Residential Mortgage Unprofessional Conduct.

205.1 Unprofessional conduct includes the following acts:

205.1.1 conducting the business of residential mortgage loans, including soliciting or marketing, in the licensee's individual name, the principal lending manager's individual name, or any name other than the name of the licensed mortgage entity with which the individual's principal lending manager is affiliated;

205.1.2 failing to remit to third party service providers the appraisal fees, inspection fees, credit reporting fees, insurance premiums, or similar fees which have been collected from a borrower;

205.1.3 ~~[failing to pay to third party service providers the fee for any service ordered by the licensee in connection with the business of residential mortgage loans, unless the potential borrower has contractually agreed to pay the third party service provider directly or unless a good faith dispute exists as to whether the service provided satisfies requirements established by state or federal law;]~~withholding payment owed, as determined by a court of competent jurisdiction to a third party service provider in connection with the business of residential mortgage loans;

205.1.4 charging for services not actually performed;

205.1.5 charging a borrower more for third party services than the actual cost of those services;

205.1.6 filling out or altering any Real Estate Purchase Contract or other contract for the sale of real property, or any addenda thereto;

205.1.7 making any alteration to any appraisal of real property;

205.1.8 unless acting as a real estate licensee and not as a mortgage licensee:

(a) providing a buyer or seller of real estate with comparative market analysis or otherwise assisting a buyer or seller to determine the offering price or sales price of real estate;

(b) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate, except that a mortgage licensee may advise a borrower about the consequences that the terms of a purchase agreement may have on the terms and availability of various mortgage products;

(c) performing any other acts that require a real estate license under Title 61, Chapter 2;

(d) advertising the sale of real estate by use of any advertising medium, except that a mortgage licensee may:

(i) advertise real estate owned by the licensee as a "for sale by owner";

(ii) provide advertising to a property owner who has not signed an agency agreement with a real estate licensee and is selling the real estate "for sale by owner", so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the property owner and the mortgage licensee; or

(iii) advertise in conjunction with a real estate brokerage, so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the real estate licensee and the mortgage licensee.

R162-205-2. Residential Mortgage Standards of Practice.

205.2.1 Supervision of licensees and unlicensed staff. Principal lending managers shall exercise reasonable supervision by controlling and directing the details and means of the work activities of all licensees affiliated with the principal lending manager and all unlicensed staff. To exercise reasonable supervision, a principal lending manager shall:

(a) establish, maintain, and provide to all licensees affiliated with the principal lending manager and all unlicensed staff written policies setting out the office procedures for complying with federal and state laws governing residential mortgage lending, including the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(b) ensure that each person affiliated with the principal lending manager and all unlicensed staff have read the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(c) ensure that the business of residential mortgage loans conducted by an entity is conducted only by individuals who hold active mortgage officer or associate lending manager licenses issued by the Division of Real Estate;

(d) ensure that the licensees affiliated with the principal lending manager conduct all residential mortgage loan business, as defined in Utah Code Section 61-2c-102(1)(e), in the name of the licensed mortgage entity with which the principal lending manager is affiliated, and not in the licensee's own name or any other name;

(e) ~~[establish and enforce written policies and procedures for protecting and insulating underwriters employed by the entity with which the principal lending manager is affiliated from pressure from licensees and unlicensed staff that would jeopardize the underwriter's objectivity]~~establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the entity which employs the principal lending manager;

(f) establish and follow procedures for responding to all consumer complaints, and personally review any complaint relating to conduct that could constitute a violation of federal or state law governing residential mortgage lending by a licensee affiliated with the principal lending manager or by any unlicensed staff;

(g) ~~[review each loan file sent to the underwriter and attest, by signature on a form to be kept in each loan file, to the accuracy of all information in the file;]~~establish and maintain a quality control plan that includes at a minimum procedures for performing pre-closing and post-closing auditing of at least ten percent of all loan files and taking corrective action for problems identified through the audit process. Quality control plans which comply with HUD/FHA or Freddie Mac requirements shall be deemed to be in compliance with this rule; and

~~[(h) for quality control purposes, review a minimum of 20 per cent of all loan applications that have failed without being sent to an underwriter, and retain with the reviewed applications some form of proof that the applications have been reviewed; and~~

~~(h)]~~(h) review for compliance with applicable federal and state laws all advertising and marketing materials and all marketing methods to be used by the entity and licensees affiliated with the principal lending manager.

205.2.1.1 Assistance from associate lending managers. A principal lending manager may employ associate lending managers to assist in performing the duties listed in Subsection 205.2.1. The principal lending manager shall actively supervise such associate lending managers and will remain personally responsible for adequate supervision of all licensees affiliated with the principal lending manager and all unlicensed

staff.

205.2.2 Reasonable supervision. A principal lending manager will not be held responsible for failing to exercise reasonable supervision if:

(a) a licensee affiliated with the principal mortgage officer or an unlicensed staff member violates a provision of federal or state law, including the Utah Residential Mortgage Practices Act, in contravention of the principal lending manager's specific written policies;

(b) the principal lending manager's current written policies were provided to the licensee or unlicensed staff prior to the violation;

(c) the principal lending manager took reasonable steps intended to enforce the written policies;

(d) upon learning of the violation, the principal lending manager reported the violation to the Division and attempted to prevent or mitigate the damage;

(e) the principal lending manager did not participate in or implicitly or explicitly condone the violation; and

(f) the principal lending manager did not attempt to avoid learning of the violation.

KEY: residential mortgage loan origination

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